

of the Commission's rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL **IS RESOLVED** in accordance with the terms of the attached Consent Decree.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Byron Young, Chief Executive Officer, Assist Wireless, LLC, 2402 Gravel Drive, Fort Worth, TX 76118, and to John J. Heitmann, Esq., Kelley Drye & Warren LLP, Washington Harbour, 3050 K Street, NW, Suite 400, Washington, DC 20007-5108.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Deputy Chief
Enforcement Bureau

⁵ 47 CFR §§ 0.111, 0.311.

- (i) “Effective Date” means the date by which both the Bureau and Assist Wireless have signed the Consent Decree.
- (j) “Hearing Aid Compatibility Rules” means Section 20.19 of the Rules and other Communications Laws governing digital wireless hearing aid compatibility, such as the Rules governing the design, selection, or acquisition of digital wireless handsets, the marketing or distribution of such handsets to consumers in the United States, and the annual filing of hearing aid compatibility status reports.
- (k) “Investigation” means the investigation commenced by the Bureau in File No. EB-SED-13-00012380 regarding whether Assist Wireless violated the Hearing Aid Compatibility Rules.
- (l) “NAL” means *Assist Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1687 (Enf. Bur. 2014).
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Assist Wireless to implement the Compliance Plan.
- (n) “Parties” means Assist Wireless and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. In February 2008, as part of a comprehensive reconsideration of the effectiveness of the Hearing Aid Compatibility Rules, the Commission released an order that, among other things, adopted new hearing aid-compatible handset deployment benchmarks that became effective beginning in 2008.¹ In so doing, the Commission adopted reporting requirements to ensure that it could monitor the availability of hearing aid-compatible handsets and provide valuable information to the public concerning the technical testing and commercial availability of these handsets.² The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation.³ In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open-ended basis.⁴

¹ See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) (*Hearing Aid Compatibility First Report and Order*), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

² See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443–44, paras. 91–97; see also 47 C.F.R. § 20.19(i).

³ See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787, para. 89 (2003), Erratum, 18 FCC Rcd 18047 (2003), Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (*Hearing Aid Compatibility Order*); see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (WTB 2004).

⁴ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3444–46, paras. 97–99, 101. The extensions of these reporting requirements became effective on December 13, 2011. See *Amendment of the Commission’s Rules Governing Hearing-Aid Compatible Mobile Handsets*, 76 Fed. Reg. 77,415 (Dec. 13, 2011). The Commission also made clear that these reporting requirements apply to manufacturers and service providers that meet the *de minimis* exception. See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3446, para. 99.

4. Assist Wireless did not timely file its hearing aid compatibility status report for the period January 1, 2012 through December 31, 2012 (2012 Status Report), which was due by January 15, 2013. Assist Wireless filed the report on March 20, 2013.⁵ Assist Wireless asserts that its delay in filing the form was due to, among other things, its corporate reorganization and relocation.⁶ Although outside the scope of the Investigation, Assist Wireless asserts that it otherwise has timely filed all required state and federal filings.⁷ Assist Wireless also contends that it has taken steps to ensure the timely filing of future hearing aid compatibility status reports.⁸

5. On February 18, 2014, the Bureau issued the *NAL* for six thousand dollars (\$6,000) against Assist Wireless for this apparent violation of Section 20.19(i)(1) of the Rules.⁹ On June 2, 2015, the Bureau released the *Forfeiture Order*, which affirmed the *NAL*.¹⁰

6. On July 2, 2015, Assist Wireless filed an application for review seeking that the *Forfeiture Order* be vacated.¹¹

7. To settle this matter Assist Wireless admits that it did not timely file its 2012 Status Report by January 15, 2013 and agrees to pay \$5,500 and implement a compliance plan to prevent future violations.

III. TERMS OF AGREEMENT

8. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

9. **Jurisdiction.** Assist Wireless agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Assist Wireless agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new

⁵ See *Assist Wireless, LLC*, Hearing Aid Compatibility Report (Mar. 20, 2013), available at http://wireless.fcc.gov/hac_documents/130411/7444149_322.PDF (last visited Sept. 15, 2016).

⁶ See *Assist Wireless, LLC*, Response to Notice of Apparent Liability for Forfeiture (Mar. 20, 2014) (on file in EB-SED-14-00013385) (NAL Response).

⁷ *Id.* at 2.

⁸ *Id.* at 5.

⁹ 47 C.F.R. 20.19(i)(1).

¹⁰ *Assist Wireless, LLC*, Forfeiture Order, 30 FCC Rcd 6027 (Enf. Bur. 2015) (*Forfeiture Order*).

¹¹ The Bureau acknowledges that certain facts presented in a separate Notice of Apparent Liability and referenced in the instant *Forfeiture Order* should not be relied on to represent a history on non-compliance by Assist Wireless since they are subject to a pending challenge by Assist Wireless and the challenge has not been adjudicated by the Bureau or the Commission. See *Assist Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14456 (2013) and *Assist Wireless, LLC*, Response to Notice of Apparent Liability for Forfeiture (December 4, 2013) (on file in EB-IHD-13-00010791).

proceeding, formal or informal, or take any action on its own motion against Assist Wireless concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Assist Wireless's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹²

12. **Admission.** Assist Wireless admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance of the provisions of paragraph 11 herein, that it did not timely file its 2012 Status Report by January 15, 2013.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Assist Wireless shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Assist Wireless complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Hearing Aid Compatibility Rules, prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, Assist Wireless agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan¹³ designed to ensure that Assist Wireless timely files its annual hearing aid compatibility status reports.

15. **Compliance Reports.** Assist Wireless shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date. Each Compliance Report shall be accompanied by a statement in compliance with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁴ All Compliance Reports shall be submitted on paper to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

16. **Reporting Noncompliance.** Assist Wireless shall report any noncompliance with the annual hearing aid compatibility status report filing requirements and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Assist Wireless has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Assist Wireless has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-

¹² See 47 CFR § 1.93(b).

¹³ Assist Wireless represents that it has plans and procedures in place that are intended to ensure that Assist Wireless timely files its annual hearing aid compatibility status reports. This Consent Decree does not require new plans or procedures except as necessary to implement paragraphs 13-16 of this Consent Decree, nor does it require application of the Compliance Plan to Covered Employees with no responsibilities for compliance with the timely filing of annual hearing aid compatibility status reports.

¹⁴ 47 CFR § 1.16.

C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act¹⁵ against Assist Wireless or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Assist Wireless with the Communications Laws.

19. **Civil Penalty.** Assist Wireless will pay a civil penalty to the United States Treasury in the amount of five thousand five hundred dollars (\$5,500) within thirty (30) calendar days of the Effective Date. Assist Wireless shall send electronic notification of payment to Kathy Harvey at Kathy.Harvey@fcc.gov, Pamera Hairston at Pamera.Hairston@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Waivers.** As of the Effective Date, Assist Wireless waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Assist Wireless shall retain the right

¹⁵ 47 U.S.C. § 208.

¹⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Assist Wireless nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Assist Wireless shall waive any statutory right to a trial *de novo*. Assist Wireless hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁷ relating to the matters addressed in this Consent Decree.

21. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Assist Wireless does not expressly consent) that provision will be superseded by such Rule or Order.

24. **Successors and Assigns**. Assist Wireless agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation and *Forfeiture Order*.

26. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

¹⁷ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

William H. Davenport
Deputy Chief
Enforcement Bureau

Date

Byron Young
President and CEO
Assist Wireless, LLC

Date